

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 1709

January 22, 2018

SUMMARY OF BILL: Enhances classifications of the sale, manufacture, distribution, and possession with intent of more than 15 grams of any substance containing fentanyl to a Class B felony and more than 150 grams of any substance containing fentanyl to a Class A felony.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures -- \$12,429,000 Incarceration*

Assumptions:

- Tennessee Code Annotated § 39-17-417 prohibits the sale, manufacture, distribution, and possession with intent of any controlled substance. Fentanyl is a Schedule II controlled substance, and the sale, manufacture, distribution, and possession with intent of fentanyl up to 200 grams is currently classified as a Class C felony.
- The proposed legislation would enhance the penalty for the sale, manufacture, distribution, and possession with intent of 15 grams or more of any substance containing fentanyl to a Class B felony.
- Additionally, the proposed legislation would enhance the penalty for the sale, manufacture, distribution, and possession with intent of 150 grams or more of any substance containing fentanyl to a Class A felony.
- According to the Tennessee Department of Health (DOH), fentanyl, when mixed with heroin or other drugs, is a leading cause of opioid deaths in Tennessee. (<https://www.tn.gov/health/news/2017/4/27/tennessee-issues-public-health-advisory-on-fentanyl.html>)
- DOH reports that 1,631 Tennesseans died from drug overdoses in 2016. This is an increase of 12 percent from the 1,451 overdose deaths recorded among Tennessee residents in 2015. (<https://www.tn.gov/health/news/2017/9/18/increasing-number-of-tennesseans-dying-from-drug-overdoses.html>)
- Statistics from the Department of Correction (DOC) show an average of 1,257 admissions for Schedule II Class C felony drug offenses in each of the past 10 years.
- It is assumed that 10 percent ($1,257 \times 0.1 = 125.7$), or 126 admissions, of the current Class C felony offenses will be enhanced by the proposed legislation.

- Of the 10 percent of admissions enhanced, it is assumed that 70 percent ($125.7 \times 0.7 = 87.9$), or 88 admissions, will involve 15 grams or more of any substance containing fentanyl and be enhanced to a Class B felony.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will account for 10 ($87.9 \times .1178$) additional admissions for a total of 98 ($88 + 10$).
- The average time served for a Class B felony is 6.39 years. The average time served for a Class C felony is 3.28 years. The proposed legislation will result in each admission serving an additional 3.11 years ($6.39 - 3.28$).
- According to the DOC, 47.1 percent of offenders will re-offend within three years of their release. A recidivism discount of 47.1 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this legislation. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law ($98 \text{ offenders} \times .471 = 46 \text{ offenders}$).
- According to the DOC, the average operating cost per inmate per day for calendar year 2018 is \$71.08.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 52 offenders (98 admissions – 46 for recidivism discount) serving 3.11 years (1,135.93 days) at a cost of \$80,742 ($\$71.08 \times 1,135.93 \text{ days}$) per offender. The total cost for 52 offenders is estimated to be \$4,198,584 ($\$80,742 \times 52$).
- Of the 10 percent of admissions enhanced, it is assumed that 30 percent ($125.7 \times 0.3 = 37.7$), or 38 admissions, of the current Class C felony offenses will involve 150 grams or more of any substance containing fentanyl and be enhanced to a Class A felony.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will account for four ($37.7 \times .1178$) additional admissions for a total of 42 ($38 + 4$).
- The average time served for a Class A felony is 17.69 years. The average time served for a Class C felony is 3.28 years. The proposed legislation will result in each admission serving an additional 14.41 years ($17.69 - 3.28$).
- According to the DOC, 47.1 percent of offenders will re-offend within three years of their release. A recidivism discount of 47.1 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this legislation. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law ($42 \text{ offenders} \times .471 = 20 \text{ offenders}$).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 22 offenders (42 admissions – 20 for recidivism discount) serving 14.41 years (5,263.25 days) at a cost of \$374,112 ($\$71.08 \times 5,263.25 \text{ days}$) per offender. The total cost for 22 offenders is estimated to be \$8,230,464 ($\$374,112 \times 22$).
- The total increase in state incarceration costs is estimated to be \$12,429,048 ($\$4,198,584 + \$8,230,464$).
- The proposed legislation will not increase the caseloads of the district attorneys general, the district public defenders, or the courts. It is assumed that any impact to the courts, district attorneys, and public defenders can be accommodated within existing resources.

**Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in dark ink that reads "Krista M. Lee". The script is cursive and fluid, with the first letters of each word being capitalized and prominent.

Krista M. Lee, Executive Director

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